

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES E. WOODS and DEPARTMENT OF VETERANS AFFAIRS,
LYONS VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 02-538; Submitted on the Record;
Issued February 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 24, 2001 on the grounds that she no longer had any disability causally related to her accepted December 8, 1997 employment injury.

On August 29, 1997 appellant, then a 62-year-old nursing assistant, filed a claim alleging on that date that she sustained a possible pulled muscle, tendon or ligament of the left knee when a hostile patient attempted to throw a chair at her. By letter dated February 27, 1998, the Office accepted appellant's claim for tendinitis of the left leg.

Subsequently, on January 12, 1998 appellant filed a claim alleging that she sustained a recurrence of disability on December 8, 1997. Appellant stated that she hurt her left leg when a linen closet door slammed against it.

In an internal memorandum dated April 6, 1998, the Office determined that a new traumatic injury case file should be created for appellant's December 8, 1997 injury. By letter dated April 13, 1998, the Office accepted appellant's claim for aggravation of internal derangement of the left knee.¹

The Office received a November 9, 1999 report of Dr. Allen Glushakow, a Board-certified orthopedic surgeon and appellant's treating physician, addressing his treatment of appellant for internal derangement of the knee. He stated:

“[Appellant] has been experiencing increased knee problems with significant pain and discomfort with decreased range of motion for some time. [Appellant] has significant arthritic changes evident on the clinical examination and/or x-rays and MRI [magnetic resonance imaging] reports. A conservative course of medical

¹ On June 30, 1998 appellant retired from the employing establishment.

treatment has been tried with little to no relief of pain. [Appellant] has experienced frequent flare-ups which dramatically alter daily living activities and responsibilities. All other physical activities have been curtailed.”

Dr. Glushakow diagnosed arthrocentesis and osteoarthritis of the knee joint. He noted that appellant was too young to be considered for total knee replacement surgery at that time, but stated that she may be a candidate in the future. He requested authorization to administer hyalgan injections into appellant’s knee.

By letter dated April 18, 2000, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination.

In a May 9, 2000 report, Dr. Rubinfeld provided a history of appellant’s December 8, 1997 employment injury, medical treatment and employment. He provided his findings on physical examination and noted a review of medical records. He diagnosed status postcontusion of the left knee and stated that appellant’s prognosis was good. Dr. Rubinfeld stated:

“[M]y examination of [appellant’s] left hip, both knees and left ankle were essentially unremarkable.

“[Appellant] is not disabled. She has achieved the maximum benefit from orthopedic treatment. There are no objective findings to justify further treatment. She has fully recovered from the effects of the on-the-job injury. Based on my examination, the examinee is capable of returning to full-duty employment with no limitations.”

On December 20, 2000 the Office issued a notice of proposed termination advising appellant that the medical evidence demonstrated that she was no longer disabled due to her work-related left knee condition. The Office noted that the weight of the medical evidence rested with the opinion of Dr. Rubinfeld.

Appellant submitted Dr. Glushakow’s February 3, 2001 report providing a history of her December 8, 1997 employment injury and medical treatment. He noted that appellant was last examined on January 5, 2001 and provided his findings on examination. Dr. Glushakow diagnosed internal derangement of the left knee. He stated:

“[I]n my opinion, [appellant’s] condition is caus[ally] related to the accident of August 29, 1997 and aggravated by the accident of December 8, 1997. Her prognosis must remain guarded. She is 65 years old now. In my opinion it would be unlikely that she could return to work as a nursing assistant.”

By decision dated February 9, 2001, the Office terminated appellant’s compensation benefits effective February 24, 2001.

In a February 12, 2001 letter, appellant, through her attorney, requested an oral hearing before an Office representative. Appellant submitted Dr. Glushakow’s March 20, 2001 report providing a history of appellant’s December 8, 1997 employment injury and medical treatment,

and his findings on physical examination. He diagnosed internal derangement of the left knee with traumatic arthritis “caus[ally] related to the accidents of August 29 and December 8, 1997.” Dr. Glushakow stated that “[appellant’s] prognosis remains poor. She will have increasing osteoarthritic changes. She will have loss of body function with respect to her left knee.” Dr. Glushakow also diagnosed osteoarthritis of the right knee “aggravated by the accident of December 8, 1997 in that she has had to favor her right knee much more.” He stated that “[appellant’s] prognosis must remain guarded. She will have loss of body function with respect to the right knee.”

In a September 20, 2001 decision, the hearing representative affirmed the Office’s decision.

The Board finds that the Office improperly terminated appellant’s compensation benefits effective February 24, 2001 on the grounds that appellant no longer had any disability causally related to her accepted December 8, 1997 employment injury.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employee’s employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability to terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.³

In the instant case, the Board finds a conflict in the medical evidence between appellant’s treating physician, Dr. Glushakow, and Dr. Rubinfeld, the second opinion physician. These physicians are in disagreement as to whether appellant had any residual disability due to her accepted December 8, 1997 employment injury. Dr. Glushakow concluded that appellant continued to experience residuals and disability due to her December 8, 1997 employment injury. Dr. Rubinfeld, however, concluded that appellant did not require further medical treatment and that she was no longer disabled due to her accepted employment injury.

Because there is a conflict between appellant’s treating physician and the second opinion physician regarding whether appellant has any continuing disability, a conflict in medical opinions existed. Where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.⁴ The Board finds that the Office improperly terminated benefits effective February 24, 2001.

² *Martin T. Schwartz*, 48 ECAB 521-22 (1997).

³ *Id.*

⁴ 5 U.S.C. § 8123(a); *see also Lawrence C. Parr*, 48 ECAB 445, 453 (1997).

The September 20 and February 9, 2001 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
February 19, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member